

Another misconception is that employees must work in Missouri in order to be counted. The statute does not state five or more “Missouri” employees, rather five or more employees. For example, an employer has businesses in Kansas and Missouri. There are three employees in Missouri and two employees in Kansas. Since the total number of employees is five, the employer is required to carry workers’ compensation insurance in Missouri.

There are some exceptions made for small corporations, LLP’s, family owned businesses, farms, etc. Your insurance agent, accountant, lawyer or the Division of Workers’ Compensation can explain those to you.

What is the big deal about carrying workers’ compensation insurance?

First, if an employer does not carry workers’ compensation insurance and an employee suffers a work related injury, she will not receive benefits to which she is otherwise entitled. The injured worker could apply for medical care through the second injury fund, but she will not be able to collect temporary total disability, permanent partial disability, etc. In addition, the second injury fund receives its money from a surcharge tax on workers’ compensation insurance. Thus, the insured employer is not only covering its employees but the uninsured employers as well.

Secondly, an employer who does not provide workers’ compensation insurance has an unfair economic advantage over the employer who does provide the coverage. Thus, the law-abiding employer is financially punished for obeying the law and may not be able to obtain new business, expand or provide better benefits to its employees.

Lastly, it is a criminal violation not to have workers’ compensation insurance if otherwise required by law. The first offense is a class “A” misdemeanor, punishable by up to one year in jail and a fine of “up to three times” the annual premium the employer should have paid or “up to \$50,000, whichever is greater.”

OTHER AREAS THE FNU INVESTIGATES

A. **Premium Fraud:** If an employer obtains insurance under false pretenses, the FNU will investigate. Generally, the areas in which premium fraud occur are: 1) under reporting payroll, and 2) misclassifying employees’ job titles.

Regardless of what you may have heard, insurance companies do want you to make a good faith estimate on your workers’ compensation application under estimated payroll. If you had \$300,000 in payroll last year and expect to have the same this year, report that figure. The reported payroll does not have to be exact, but if the above employer placed \$100,000 in estimated payroll versus \$300,000 it will probably have a premium fraud investigation initiated on it.

Misclassifying employees can be as bold as having a roofing business and listing all employees as clerical to claiming your roofers are general carpenters. In both cases, the result would be a reduced premium. Unfortunately, it is also a misclassification resulting in a premium fraud referral for prosecution.

Subcontractors: if you use subcontractors great! If you have employees do not list them as subcontractors. Doing this not only opens you up to a possible workers’ compensation investigation but also could result in an investigation from the Division of Employment Security and the Missouri Department of Revenue.

B. **Charging employees for workers’ compensation.** It is a crime for an employer to charge its employees for any part of the employer’s workers’ compensation insurance.

C. **Reporting Timelines:** There are specific timelines in which an employer/insurer must report an injury to the Division. The maximum amount of time is 30 days. It is a criminal violation not to report an injury or to timely file a first report of injury.

AREAS THE FNU DOES NOT INVESTIGATE

A. It is not a criminal violation for an employer to fire an employee for filing a workers’ compensation claim. Nonetheless, the injured worker may have a civil cause of action against the employer and obtain a substantial judgment.

B. It is not a criminal violation for an employer to select an injured worker’s medical provider. The statute gives that right to the employer. An employee can select a different physician at the employee’s expense.

C. If a doctor rates an injured worker at Maximum Medical Improvement (MMI) it is not a criminal violation for the insurance company to stop paying TTD benefits. Unless of course an

Administrative Law Judge has ordered those payments to be made.

D. It is not a crime for the claims adjuster to be rude to an injured worker or vice-a-versa. It is not an advisable approach to resolving a claim, but it is not illegal.

E. Injured workers’ are not required by law to answer their telephone while collecting TTD.

WHAT’S CHANGED?

The Statute of Limitations for prosecution has changed from 1 year from the date of offense to 3 years from the date of offense.

Filing a false claim is now a Class D felony.

It will be a Class D felony for an insurance company or authorized self-insured to fail to pay a known and legally indisputable obligation.

Lying to an investigator with the Fraud and Noncompliance Unit is a Class A misdemeanor.

Submitting a false or forged certificate of workers’ compensation insurance is a Class D felony.

The 5-1/2 day rule for employees has been repealed. If you hire a fifth employee (non-construction) you need to have workers’ compensation insurance that day.

CONCLUSION

This information will assist you in better understanding what is and is not a crime under Missouri’s workers’ compensation statute. Of course, every case is fact specific. If you have questions or need additional information, we are here to assist you. The FNU can be reached at: 1-800-592-6003 or PO Box 1009, Jefferson City, Missouri 65102. You can also obtain additional information, by going to our web site: www.dolir.mo.gov/wc/fraud.

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www.dolir.mo.gov/wc

WORKERS’ COMPENSATION

Fraud and Noncompliance



Missouri Department of
Labor and Industrial Relations

**DIVISION OF
WORKERS’ COMPENSATION**

Fraud and Noncompliance Unit

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The Missouri Workers’ Compensation Division, Fraud and Noncompliance Unit (FNU) was created by the passage of Senate Bill 251 in the 1993 legislative session. The FNU is responsible for investigating all allegations of fraud or noncompliance involving workers’ compensation committed in the state of Missouri.

This brochure explains what fraud and noncompliance is and what it takes to prove a violation. It will help the reader understand the law, determine if a violation has occurred and provide information to assist in filing a complaint with the Fraud and Noncompliance Unit (FNU).

Statute

The Missouri criminal statute that applies to workers’ compensation fraud and noncompliance is §287.128, RSMo. This statute establishes the FNU and outlines the majority of the violations the FNU are authorized to investigate. Simply stated, **fraud** is a false statement made in an attempt to obtain or deny a benefit as it relates to workers’ compensation. The false statement must be about a material fact. In laymen’s terms, a **LIE**! Generally, noncompliance occurs when an employer fails to carry workers’ compensation in violation of the Missouri workers’ compensation law.

Below is a breakdown of the fraud statute, §287.128, RSMo. This breakdown will help one better understand what the FNU requires before it will refer a case to the Missouri Attorney General’s office or local prosecuting attorney’s office for prosecution.

WORKERS' COMPENSATION FRAUD

Where’s the lie?

As was previously mentioned, a lie must have been told that relates to a workers’ compensation benefit before fraud can occur. Most fraud allegations fall under §287.128.(1).(6), RSMo, which states that one must, “Knowingly make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any benefit;”.

The following are key elements, which must be established before the Division will refer a case for prosecution.

A. **Knowingly:** The FNU must establish that an individual intentionally made a false statement. An

honest mistake is not a crime. A false statement can often times be established through statements the person made, forms the person completed or personnel manuals the employer provided to its employees.

B. **Make or cause to be made:** The person had to actually make the fraudulent claim or had someone else make the statement on his or her behalf. It does not matter if the statement was oral or written.

C. **Any false or fraudulent material statement or material representation:** The “LIE.” There must be a “LIE” for there to be a criminal violation, and not just any lie. It must be material to the injured worker attempting to receive or being denied a benefit. The following examples will help highlight the difference between a “material” lie and a lie that would not constitute a criminal violation.

Other Income

Example of non-materiality: A claimant states that he has no money. In fact, he has several thousand dollars in the bank. You now have a lie, but how is it material to him receiving workers’ compensation benefits? In all likelihood, it is not! An injured worker’s benefits are not affected by his savings account.

Example of materiality: An insurance adjuster or employer asks the injured employee if she is working. The employee says, no. If it is determined that she is employed, while collecting workers’ compensation benefits, you have fraud.

In Missouri it is not a criminal violation under the workers’ compensation law, to work while drawing temporary total disability (TTD). If you become aware of an injured worker receiving other sources of income you may bring that to the attention of the Administrative Law Judge (ALJ). However, if the claims adjuster, doctor or employer asks an injured worker if she is working and she denies it, you have a good referral for workers’ compensation fraud. Why?

You have a lie that relates to workers’ compensation benefits. If the injured worker is able to work for another employer, why can’t she work for the employer paying the TTD? The employer/insurer may be able to either stop paying or reduce the amount of TTD it is paying the injured worker.

Medical

Example of non-materiality: An injured worker goes to his doctor’s appointment. He claims to be in pain. The doctor prescribes pain medication and places the injured worker on light duty. The light duty consists of no prolonged standing and no lifting over 15 pounds. You find out the injured worker is remodeling his home. You notify the insurance company, and they have the injured worker placed under surveillance. The private investigator obtains videotape of the injured worker violating the work restrictions.

Do you have a good fraud case? Probably not! Why? There is no “LIE.”

You see, no one asked the injured worker what he could or could not do. Everyone has different levels of pain tolerance. It is not a criminal violation for an injured worker to violate his doctor’s work restrictions.

On the other hand, suppose the injured worker told the doctor or nurse that he could not, “even lift a bag of flour . . . stand for more than 10-15 minutes without having to lie down for 1-2 hours and . . . could not bend over because the pain is too severe.”

Nonetheless, the videotape shows the injured worker lifting a 4 x 4 post, bending over to pick various items up and working for hours without taking a break. This confirms that the statements made to the doctor or nurse were fraudulent.

Why? You have a LIE! You have specific, articulated statements from the injured worker that are documented in the medical records. The doctor used the injured worker’s statements to direct medical care and to place him in an “off work” status. Thus, the injured worker is receiving a benefit (medical care, TTD, etc.), to which he may not be entitled. Lastly, you have videotape that verifies that the statements made to the doctor or nurse were false.

D. **For the purpose of obtaining or denying any benefit:** A material misrepresentation, which the subject knowingly made, is not a crime unless it is for the purpose of obtaining or denying a benefit. For instance, lying to a coworker about the nature or extent of one’s injuries is probably not a crime because the coworker has no ability to affect benefits.

It has been the experience of the FNU that the vast majority of injured workers are not committing workers’ compensation fraud. The violators are the

exception to the rule. In addition, most of the fraud cases referred for prosecution are legitimate injuries. The violation occurred after the injured worker began receiving workers’ compensation benefits. So, it is possible that an employer/insurer will owe benefits, even though the FNU referred the person for prosecution.

The following are examples of some of the fraud cases we investigate:

1. Altering/forging a no return to work slip.
2. Altering/forging a prescription to obtain additional medications.
3. Claiming a non-work related injury as work related.
4. Denying other sources of income/working while collecting TTD.
5. Providing false information to a medical provider, employer and/or insurer about one’s physical limitations.
6. Providing false/fraudulent information in a workers’ compensation deposition.
7. Colluding with an employer to either claim a non-work related injury as work related or delaying the filing of the claim until after an uninsured employer obtains workers’ compensation insurance.
8. Denying prior injuries.

Although not all encompassing, the above examples should assist you in determining if you have a fraudulent workers’ compensation claim and if the FNU can assist you through its investigative efforts.

It is a class “D” felony. In addition, the person shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.

WORKERS' COMPENSATION NONCOMPLIANCE

An employer with five or more employees is required to carry workers’ compensation insurance. If you are in the construction industry and have one or more employees, you are required to carry workers’ compensation insurance. The statute does not differentiate between full-time or part-time employees.

Corporate officers must be counted and insured. Accordingly, an employer who manufactures pallets and has two full-time employees, one part-time employee and two corporate officers is required to carry workers’ compensation insurance.